

August 3, 2010\*

**MEMORANDUM OF AGREEMENT BETWEEN ATLANTIC COUNTY  
AND THE NEW JERSEY PINELANDS COMMISSION**

**SECTION ONE: BASIS FOR MEMORANDUM OF AGREEMENT**

- I. The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.52(c)1) provides that the Commission may enter into a Memorandum of Agreement (MOA) with any local public agency (county or municipal government) which authorizes that local public agency to carry out specified development without securing individual development approval from the Commission. Any development subject of such a MOA must be consistent with Subchapter 5 (Minimum Standards for Land Use and Intensities) and Subchapter 6 (Management Programs and Minimum Standards) of the Pinelands Comprehensive Management Plan (CMP). This MOA between Atlantic County (hereinafter "County") and the New Jersey Pinelands Commission (hereinafter "Commission") is intended to facilitate the review of certain classes of local public agency development applications that are specified in this MOA that may be undertaken by the County in the Pinelands Area without securing individual development approval from the Commission. Any development approved under the provisions of this MOA shall be conducted consistent with the standards of Subchapter 6 of the CMP, including, but not limited to, the protection of ground and surface water resources, wetlands, threatened and endangered plants and animals, vegetation, such as clearing and soil disturbance, and historic resources and the goals and objectives of the CMP.

**SECTION TWO: ACTIVITIES THAT DO NOT REQUIRE PINELANDS  
COMMISSION APPROVAL**

- II. The Commission and the County agree that:
  - A. The maintenance and repair of existing public facilities, such as potable water and sanitary sewer mains, the repaving of existing paved roads to the same width, the removal of accumulated sediments above the pre-existing grade of a drainage ditch, and the in kind replacement of equipment, such as the replacement of an existing office building air conditioner compressor located outside of a municipal building, do not require application to, or approval by, the Pinelands Commission. However, the CMP does require that these activities be conducted consistent with the standards of Subchapter 6 of the CMP, including, but not limited to, the protection of ground and surface water resources, wetlands, threatened and endangered plants and animals, vegetation, such as clearing and soil disturbance, and historic resources.

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\* Certain very minor, non-substantive, wording changes identified in the MOA by the Deputy Attorney General representing the Pinelands Commission were made on August 3, 2010.

B. The CMP (N.J.A.C. 7:50-4.1(a)) specifies certain activities that meet the CMP definition of development, but do not require an application to the Commission. Although not requiring application to the Commission, the specified activities must still be conducted consistent with the standards of Subchapter 6 of the CMP, including, but not limited to, the protection of ground and surface water resources, wetlands, threatened and endangered plants and animals, vegetation, such as clearing and soil disturbance, and historic resources. For informational and reference purposes only, below is a partial list of development activities that do not require application to the Commission based upon the current provisions of the CMP( N.J.A.C. 7:50-4.1(a)):

1. The construction of any traffic signage (N.J.A.C. 7:50-4.1 (a) 4);
2. The clearing of less than 1,500 square feet of land (N.J.A.C. 7:50-4.1 (a) 7);
3. The construction of any addition or accessory structure for any non-residential use provided said addition or structure will be located on or below an existing impervious surface and the existing use is served by public sanitary sewer and said addition or structure will cover an area of no more than 1,000 square feet (N.J.A.C. 7:50-4.1 (a) 8);
4. The demolition of any structure less than 50 years old ( N.J.A.C. 7:50-4.1 (a) 9);
5. The repair or replacement of any existing onsite waste water disposal system (N.J.A.C. 7:50-4.1 (a) 10);
6. The repaving of existing roads provided no increase in the paved width of said road will occur (N.J.A.C. 7:50-4.1 (a) 11);
7. Fences provided no more than 1,500 square feet of land is to be cleared (N.J.A.C. 7:50-4.1 (a) 13);
8. Tree pruning (N.J.A.C. 7:50-4.1 (a) 15); and
9. Normal and customary landscape planting (N.J.A.C. 7:50-4.1 (a) 18).

C. With respect to II.B. 1-9 above, the information provided in II.B. 1-9 above is provided for informational and reference purposes only and that if N.J.A.C. 7:50-4.1(a) of the CMP is amended in the future, any such amendment(s) would thereafter govern.

D. All development activities undertaken in association with, or accessory to, II.A. and B. above (e.g. road shoulder fill to ensure that the repaved surface of a new road transitions back to existing road shoulder grade) shall also be conducted consistent with the standards of Subchapter 6 of the CMP, including, but not limited to, the protection of

ground and surface water resources, wetlands, threatened and endangered plants and animals, vegetation, such as clearing and soil disturbance, and historic resources.

### **SECTION THREE: COOPERATIVE EFFORTS**

III. The Commission and the County further agree that:

- A. They will cooperatively implement the terms of this MOA to ensure that the development subject to this MOA's application process that allows the County to carry out MOA specified development without securing individual development approval from the Commission will comply with the permitted use standards of Subchapter 5 of the CMP and the environmental standards of Subchapter 6 of the CMP, including but not limited to, the protection of ground and surface water resources, wetlands, threatened and endangered plants and animals, vegetation, such as clearing and soil disturbance, and historic resources.
- B. They will work together to implement the "Mowing and Maintenance Best Management Practices For Pine Barrens Roadside Plant Communities" identified in Appendix "A" of this MOA and continue to work together in a cooperative effort to develop and implement other road right-of-way maintenance practices that can better protect characteristic Pinelands soil and habitat conditions, including native and rare plant communities, while ensuring that roadways continue to be maintained in a safe and efficient manner. To further this cooperative effort, the Commission staff will be responsible for identifying and providing to the County known locations of threatened and endangered plant species within County road rights-of-way.

### **SECTION FOUR: CLASSES OF DEVELOPMENT SUBJECT TO A TWENTY ONE (21) DAY COMMISSION STAFF APPROVAL**

IV. The Commission and the County further agree that:

- A. For the classes of public development identified in IV.H. below, the filing of a formal application for individual public development approval with the Commission shall not be required.
- B. Any public development identified in IV.H. below shall meet all standards of Subchapter 5 and Subchapter 6 of the CMP. These standards include, but are not limited to, permitted use standards and environmental standards, including the protection of ground and surface water resources, wetlands, threatened and endangered plants and animals, vegetation, such as clearing and soil disturbance, and historic resources.
- C. For all classes of public development identified in IV.H. below, the County Engineer or other responsible County official shall submit the following information to the Commission:
  - 1. A description of the proposed public development;

2. Information providing the location of the proposed public development, the tax map block and lot numbers of all involved lots and permission of any property owner(s); and
  3. A copy of any plan for the project.
- D. Within twenty one (21) days of the date the Commission staff receives information submitted in accordance with IV.C. above, the Commission staff will issue a letter indicating either that, provided all other necessary approvals and permits have been obtained, the County may proceed with the proposed public development under the MOA or that the County shall not proceed with the proposed development under the MOA for one or more of the following reasons:
1. The proposed public development is not covered by Section IV. H of this MOA; or
  2. Sufficient information has not been provided to the Commission staff by the County to demonstrate that the proposed public development is consistent with the standards of the CMP; or
  3. The proposed public development is inconsistent with the standards of the CMP.
- E. If the Commission staff does not issue a letter within 21 days of receipt of information, the County may proceed with the proposed development provided all other necessary approvals and permits have been obtained.
- F. If the Commission staff determines that the proposed public development cannot proceed under the MOA for one or more of the three reasons identified in IV.D. above, the County Engineer or other responsible County official may modify the proposed public development and submit additional information to the Commission staff until the Commission staff determines, in writing, that the proposed public development may proceed under the MOA.
- G. If the County disagrees with the written determination of the Commission staff that the proposed public development may not proceed under the MOA, the County may submit a formal application for individual public development approval to the Commission in accordance with the provisions of the CMP (N.J.A.C. 7:50-4.52(b)). The proposed public development may not proceed until any such formal application has been completed, the Commission has approved the application and any other necessary approvals and permits have been obtained.
- H. In accordance with Section IV.A. above, the following classes of public development shall not require the filing of a formal application for individual public development approval with the Commission:

1. The installation of traffic safety improvements, including, but not limited to, guard/guide rails, traffic lights, street lights and equipment boxes provided that the proposed development does not exceed 5,000 square feet of new disturbance. Disturbance of existing paved or concrete areas shall not be considered new land disturbance for the purpose of determining the 5,000 square feet of new land disturbance. Specifically excluded from this class of development are road and shoulder widening.
2. Accessory\* improvements to existing potable water and sanitary sewer treatment plant facilities, not intended to provide for an increase in plant capacity, provided that any proposed tree clearing shall not exceed the equivalent of 5,000 sq. ft.
3. Public agency communication towers, antennas and structures accessory to the communication tower on a parcel containing an existing public use.
4. The installation of miscellaneous equipment boxes, instruments, pole mounted equipment, scientific devices and similar structures, provided that the proposed development does not exceed 5,000 sq. ft. of new land disturbance. Disturbance of existing paved or concrete areas shall not be considered new land disturbance for the purpose of determining the 5,000 square feet of new land disturbance.
5. Changes in one type of public use to another type of public use provided that no other development is proposed.
6. Subdivision of lands by a public agency provided that any proposed vacant lots are consolidated with one or more existing developed lots so that no new vacant lots are created.
7. Development that is located on an existing paved or concrete surface provided that the development is accessory to existing development and any proposed building does not exceed 5,000 sq. ft. of floor area.
8. Installation of solar panels and wind turbines accessory to existing development, provided that the facilities are either roof mounted, mounted on existing paved or concrete surfaces or the proposed development does not exceed 5,000 sq. ft. of new land disturbance. Disturbance of existing paved or concrete areas shall not be considered new land disturbance for the purpose of determining the 5,000 square feet of new land disturbance.
- I. All development activities undertaken in association with, or accessory to, IV.H. 1-8 above shall also be conducted consistent with the standards of Subchapter 6 of the CMP, including, but not limited to, the protection of ground and surface water resources, wetlands, threatened and endangered plants and animals, vegetation, such as clearing and soil disturbance, and historic resources.

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\* Accessory, as used here and throughout this MOA, is as defined in the CMP (N.J.A.C. 7:50-2.11).



**SECTION FIVE: CLASSES OF DEVELOPMENT SUBJECT TO A THIRTY (30) DAY WRITTEN COMMISSION STAFF APPROVAL**

- V. The Commission and the County further agree that:
- A. For the classes of public development identified in V.H. below, the filing of a formal application for individual development approval with the Commission shall not be required.
- B. Any public development identified in V.H. below shall meet all standards of Subchapters 5 and 6 of the CMP. These standards include, but are not limited to, permitted use standards and environmental standards, such as the protection of ground and surface water resources, wetlands, threatened and endangered plants and animals, vegetation, such as clearing and soil disturbance, and historic resources.
- C. For all classes of public development identified in V.H. below, the County Engineer or other responsible County official shall submit the following information to the Commission:
1. A description of the proposed development;
  2. Information providing the location of the proposed development, the tax map block and lot numbers of all involved lots and permission of property owner(s); and
  3. A copy of any plan for the project.
- D. Within thirty (30) days of the date the Commission staff receives information submitted in accordance with V.C. above, the Commission staff will issue a letter indicating either that, provided all other necessary approvals and permits have been obtained, the County may proceed with the proposed public development under the MOA or that the County shall not proceed with the proposed development under the MOA for one or more of the following reasons:
1. The proposed public development, as determined at the Commission's sole discretion, is not covered by Section V.H of this MOA; or
  2. That sufficient information (e.g. wetlands mapping, threatened and endangered species, stormwater management) has not been provided to demonstrate that the proposed public development is consistent with the standards of the CMP; or
  3. That the proposed public development is inconsistent with the standards of the CMP.
- E. If the Commission staff determines that the proposed public development cannot proceed under the MOA for one or more of the reasons identified in V.D. above, the County

Engineer or other County official may modify the proposed public development and submit additional information to the Commission staff until the Commission staff determines, in writing, that the proposed public development may proceed under the MOA.

- F. No public development shall proceed until the Commission staff has notified the County in writing that the proposed public development is approved under the provisions of the MOA and all other necessary approvals and permits have been obtained.
- G. If the County disagrees with the written determination of the Commission staff that the proposed public development may not proceed under the MOA, the County may submit a formal application for individual public development approval to the Commission in accordance with the provisions of the CMP (N.J.A.C. 7:50-4.52(b)). The proposed public development may not proceed until any such formal application has been completed, the Commission has approved the application and any other necessary approvals and permits have been obtained.
- H. In accordance with V.A. above, the following classes of public development shall not require the filing of a formal application for individual public development approval with the Commission:
  - 1. Additions to, or facilities accessory to, existing principal public uses provided that:
    - a. The proposed addition or facility is located almost exclusively within an existing development envelope on the parcel; and
    - b. Any proposed tree clearing shall not exceed the equivalent of 5,000 sq. ft.; and
    - c. New impervious coverage, as defined by the CMP, does not increase by more than 5,000 sq. ft. Disturbance of existing paved or concrete areas shall not be considered new impervious coverage for the purpose of determining the 5,000 square feet of new impervious coverage.

Specifically excluded from this class of development is road widening.

- 2. Revisions to public development applications previously approved by the Commission provided construction has not been completed and neither the intensity of the use nor the size of the development envelope is materially increased.
- 3. Installation of water, sewer, gas, electric and similar utility mains and accessory structures provided the proposed development is almost exclusively located within the disturbed portion (e.g. paved, gravel, cleared, maintain turf) of public road rights-of-way.
- 4. The demolition of a publicly owned structure that is 50 years old or older but is neither a Pinelands designated cultural resource nor located within a Pinelands Commission designated historic district.

5. Improvements to an existing stormwater management system that services an existing public road or other public facility, including the piping of existing stormwater management swales, provided that the improvements are located almost exclusively within an existing disturbed area and any proposed tree clearing shall not exceed the equivalent of 5,000 sq. ft.
6. The development of one single family dwelling on an existing parcel/lot of record and the parcel/lot is publicly owned.
7. The installation or replacement of potable water test wells and production wells and geothermal test and production wells, and accessory structures, provided that no increase in diversion from the Kirkwood-Cohansey aquifer will occur.
8. Road intersection reconstruction, realignment and improvements provided that new land disturbance does not exceed 5,000 sq. ft. Disturbance of existing paved or concrete areas shall not be considered new land disturbance for the purpose of determining the square footage of new land disturbance.
9. Bridge and road culvert enlargement, extension, reconstruction and replacement provided the total proposed new land disturbance does not exceed 5,000 sq. ft. Disturbance of existing paved or concrete areas shall not be considered new land disturbance for the purpose of determining the square footage of new land disturbance.
10. Existing paved road reconstruction, widening and accessory improvements provided:
  - a. The total pavement widening does not exceed 10 feet except turning lanes can exceed the 10 foot widening limit up to a maximum of 18 feet in width, and
  - b. No new travel lanes are proposed except that proposed turning lanes, not exceeding 500 feet in length, are not considered new travel lanes for the purpose of this class of development, and
  - c. The proposed improvements are almost exclusively located in existing developed/disturbed areas, and
- I.. All development activities undertaken in association with, or accessory to, V.H. 1-10 above shall also be conducted consistent with the standards of Subchapter 6 of the CMP, including, but not limited to, the protection of ground and surface water resources, wetlands, threatened and endangered plants and animals, vegetation, such as clearing and soil disturbance, and historic resources.



**SECTION SIX: DEVELOPMENT REQUIRING FORMAL APPLICATION TO THE COMMISSION**

- VI. The Commission and the County further agree that;
- A. For any class of public development not identified in IV.H. or V.H. above, a formal application for individual public development approval to the Commission is required in accordance with the provisions of the CMP (N.J.A.C. 7:50-4.52(b)). Any public development requiring a formal application for individual public development approval to the Commission shall not proceed until such formal application has been completed, the Commission has approved the application and all other necessary approvals and permits have been obtained.
- B. Any application for public development, whether subject of this MOA or not, that requires a Commission waiver of strict compliance, shall complete a formal application for individual public development approval to the Commission in accordance with the provisions of the CMP (N.J.A.C. 7:50-4.52 (b)).

**SECTION SEVEN: APPLICATION FEES**

- VII. In accordance with the provision of the CMP (N.J.A.C. 7:50-1.6(a)2), the County shall not have to pay any public development application fee for public development that this MOA authorizes to be carried out without individual development approval from the Commission.

**SECTION EIGHT: MISCELLANEOUS**

- VIII. Authorization and Agreement
- A. The Commission hereby authorizes the Executive Director to interpret the provisions of this MOA consistent with the goals, objectives and requirements of the CMP.
- B. This MOA sets forth the entire agreement between the parties. No provision of this MOA shall be modified without the express written approval of both the County and the Commission. Should it be determined that one or more covenants, conditions or requirements of this MOA may be unnecessary in any given instance, such a determination shall not be deemed to rendered unnecessary the consent or approval of the party determining that the covenants, conditions or requirements of this MOA may be unnecessary to any subsequent similar request by or act of the other party.

**SECTION NINE: EFFECTIVE DATE**

- IX. This MOA shall take effect upon approval by the authorized representative of both parties and subsequent to expiration of the Governor's review period.

**SECTION TEN: TERMINATION OF PRIOR MEMORANDA OF AGREEMENT**

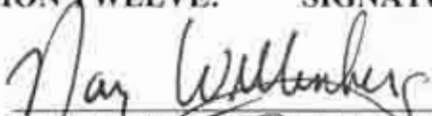
X. The Commission and the County further agree that a prior MOA, signed by the Commission's Executive Director on August 23, 1999, entered into between the Commission and the County to facilitate review of public development applications in the Pinelands Area shall be terminated upon the effective date of this MOA

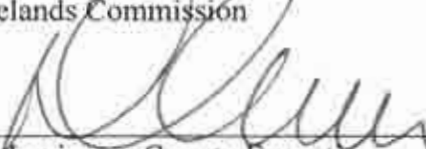
**SECTION ELEVEN: SUSPENSION OR TERMINATION OF MOA**

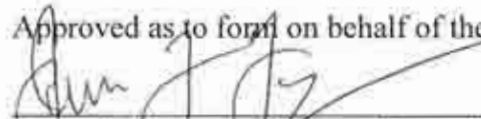
XI. The Commission and the County further agree that:


- A. This MOA may be temporarily suspended for cause by either party. Any such temporary suspension shall be in writing and shall not exceed 180 days.
- B. This MOA shall remain in effect unless both parties consent in writing to terminate the MOA or the MOA is terminated by either party upon sixty (60) days written notice.

**SECTION TWELVE: SIGNATURES**

  
 \_\_\_\_\_ 8/8/11  
 Nancy Wittenberg, Executive Director Date  
 NJ Pinelands Commission

  
 \_\_\_\_\_ 6/23/11  
 Dennis Levinson, County Executive Date

Approved as to form on behalf of the County of Atlantic  
  
 \_\_\_\_\_ 6/23/11  
 James F. Ferguson, County Counsel Date

  
 \_\_\_\_\_ 6/23/11  
 Sonya G. Harris, Clerk, Atlantic County Board of Chosen Freeholders Date

Approved as to form by:

  
 \_\_\_\_\_ 8 Aug. 11  
 Deputy Attorney General Date  
 State of New Jersey

Appendix "A"

Mowing and Maintenance Best Management Practices for Pine Barrens Roadside Plant Communities"



## MOWING AND MAINTENANCE BEST MANAGEMENT PRACTICES FOR PINE BARRENS ROADSIDE PLANT COMMUNITIES<sup>1</sup>



### MOWING AND MAINTENANCE REGIMES

The following mowing and maintenance practices are intended to protect and promote native Pinelands vegetation while addressing traffic safety concerns relative to roadside shoulders. *Please refer to the typical section on the following page, which illustrates the 3 vegetated Zones described below.*

#### I. REGULAR-MOW ZONE

The regular-mow zone includes any vegetated portion of the road shoulder within 8 feet from the outside edge of the travel lane. The purpose of this zone is to provide safe emergency vehicle pull-off areas and to allow road maintenance activities including maintenance of drainage swales and access to utilities. This zone may be wider than 8 feet where drainage swales or utilities are set farther back from the roadway.

##### a. Regular-Mow Zone Mowing and Maintenance Regime

*The regular-mow zone should be mowed as frequently as needed to maintain its practical functions.* Because typical roadside mowers have a 5- to 6-foot cutting width and paved/gravel portions of road shoulders ordinarily vary from 2- to 3-feet in width, it is expected that no more than one pass will be required during each mowing event. Vegetation height in these areas should be kept below 10 inches at all times to prevent contact with the bottom of vehicles, which may cause the vegetation to catch fire under certain conditions. However, to benefit some native Pine Barrens species, mowing height should be no lower than 6 inches above the ground.

To encourage native Pinelands species and minimize the establishment of non-native species, only use clean fill along roadsides that is obtained from a local source. Do not use nutrient-rich or high pH soil or soil amendments. Areas of any zone that are currently sparsely vegetated should not be mowed. This will reduce soil erosion and soil compaction caused by mower wheels and help promote re-vegetation.

##### b. Rare Plant Hotspots Mowing Regime

To prevent impacts to known rare plant populations, the dormant-season mow zone mowing regime, described in Section 2, should be followed at sites where rare plants are found (*“rare plant hotspots”*). The boundaries of rare plant hotspots should be marked with signs to alert roadside managers to their location and avoid untimely mowing that would be detrimental to these rare plant populations.

#### 2. DORMANT-SEASON MOW ZONE

The widths of dormant-season mow zones vary and these zones are kept free of all woody plants that present potential hazards to drivers. Where intersection sight lines extend into the dormant-season mow zone, vegetation that is likely to obstruct such sight lines must be maintained below 30 inches at all times.

##### Dormant-Season Mow Zone Mowing and Maintenance Regime

*The dormant-season mow zone is mowed no more frequently than one time each year.* The dormant season extends from December 1<sup>st</sup> to March 31<sup>st</sup>. However, mowing activity should be confined to the month of March to allow the full, uninterrupted life cycle of plants - including growth, flowering, seed production, seed dispersal and seedling establishment.

Set mowing height no lower than 6 inches above the ground to avoid damage to short-statured, woody native species (e.g., Bearberry, Wintergreen, and Pine Barrens Heather), which are excellent groundcover for roadsides.

Areas of any zone that are currently sparsely vegetated should not be mowed. This will reduce soil erosion and soil compaction caused by mower wheels and help promote re-vegetation.

Annual mowing will remove the tops of any woody plants. However, exclusive use of dormant-season mowing may not be adequate to prevent some vigorous woody species from growing to a height that obstructs sight lines, especially where establishment is already underway (e.g., Pitch Pine sprouts). In these cases, it may be necessary to selectively cut such plants to ensure unobstructed sight lines.

#### 3. UNDISTURBED ZONE

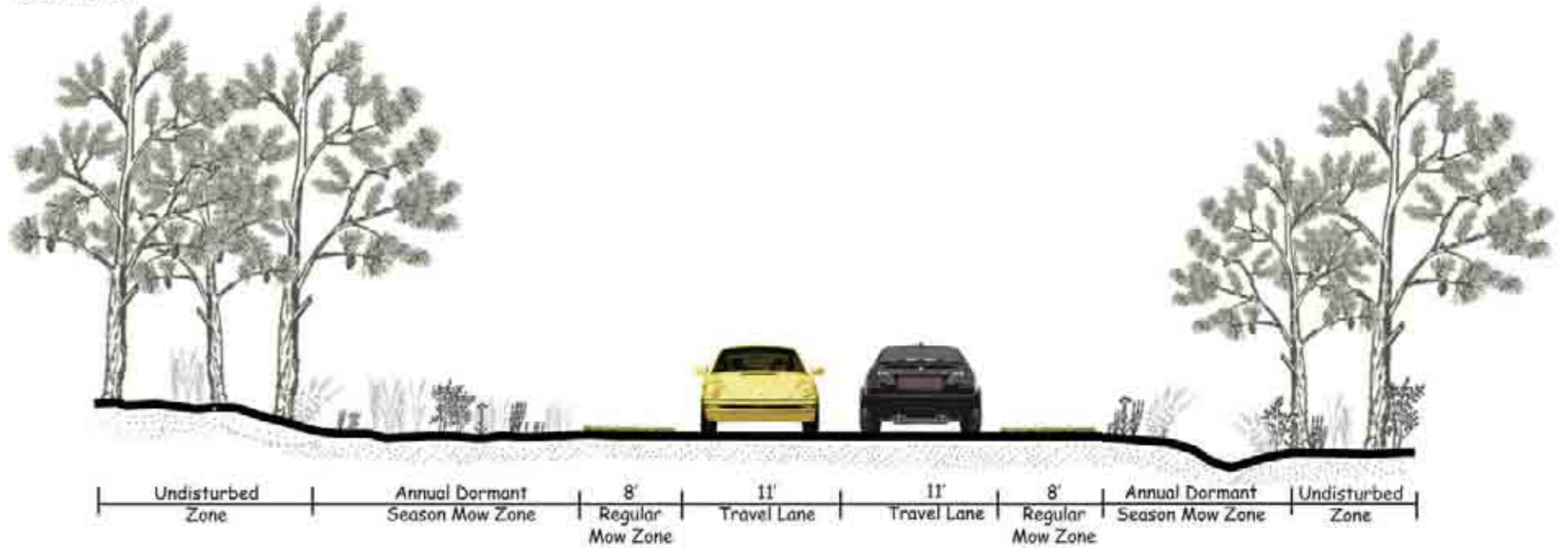
This zone begins at the tree line of adjacent forest cover and defines the limit of the dormant-season mow zone.

##### Undisturbed Zone Mowing and Maintenance Regime

*Mowing is not recommended in this zone except to remove tree limbs that may hang over and shade the dormant-season mow zone.*

<sup>1</sup> **Note:** Adapted from Van Clef, Michael, Ph.D.; Ecological Solutions, LLC; May 2009; “BEST MANAGEMENT PRACTICES FOR PINE BARRENS ROADSIDE PLANT COMMUNITIES”

*Pine Barrens Roadside Plant Communities*  
*Best Management Practices*  
**Mow Zones**



*Note: Illustrations Not to Scale*  
*Pinelands Commission, April 2010*